

Sep 27, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

2:24-PO-0010-JAG-1

Plaintiff,

ORDER REDUCING  
CONTEMPT SANCTION

v.

**USMS ACTION REQUIRED**

PHILLIP HARRIS, JR.,

Defendant.

Pending before the Court is Defendant's Motion for Reconsideration of Contempt Finding and Duration of Sanction. ECF No. 28. Defendant asks that the Court retract the finding of contempt, arguing that Defendant lacks the capacity to meet the intent element. In the alternative, Defendant asks that the Court reduce the sanction due to mitigating circumstances. The Government responded requesting that the Court not retract the contempt finding. ECF No. 29. The Government deferred to the Court regarding the appropriate duration of the contempt sanction. *Id.* Upon review of the briefing, and in consideration of the events precipitating the contempt order, the Court denies Defendant's request to retract the finding of contempt and grants Defendant's motion to reduce the sanction.

**I. MOTION TO RETRACT FINDING OF CONTEMPT**

As discussed in the Court's Order of Contempt, Fed. R. Crim P. 42(b) requires that Defendant's misbehavior "obstructed the administration of justice" and that the court must personally witness the entirety of the basis for the finding of contempt. "Where misconduct occurs in open court, the affront to the court's

1 dignity is more widely observed, justifying summary vindication.” *Pounders v.*  
2 *Watson*, 521 U.S. 982, 988, 117 S. Ct. 2359, 2362 (1997). Though reviewed for  
3 abuse of discretion, the Ninth Circuit acknowledged that “the trial court is in the  
4 best position to judge whether there exists a need for immediate penal vindication  
5 of the dignity and authority of the court.” *In re Gustafson*, 650 F.2d 1017, 1023  
6 (9th Cir. 1981). Summary contempt gives judges the limited power “to punish  
7 conduct that threaten[s] to disrupt the court's ongoing proceedings.” *Pounders v.*  
8 *Watson*, 521 U.S. 982, 992 (1997).

9  
10 Defendant asks the Court to adopt the elements of criminal contempt  
11 pursuant to 18 U.S.C. § 401(1), incorporating a *mens rea* requirement. The  
12 Court’s contempt finding arose from the authority found in 28 U.S.C. §636(e)  
13 pursuant to the summary contempt described in Fed. R. Crim P. 42(b). In cases  
14 addressing summary contempt where diminished capacity invalidated a summary  
15 contempt finding, the presiding judge failed to account for mental health issues  
16 already known to the judge based on the history of the case. See *e.g.*, *United*  
17 *States v. Flynt*, 756 F.2d 1352 (9th Cir. 1985), amended, 764 F.2d 675 (9th Cir.  
18 1985). In the situation presented with this case, the only information available to  
19 the Court was presented at trial, in the Government’s Sentencing Memorandum,  
20 and in character reference letters Defendant had submitted. Defendant’s ongoing  
21 disruptive behavior rendered any evidentiary inquisition into Defendant’s mental  
22 state impossible. The Court exercised summary contempt for the exact purposes  
23 laid out by the rule and case law.

24  
25 Further, the Court finds that Defendant intended to disrupt proceedings with  
26 his outbursts and actively sought to prevent the administration of justice.  
27 Defendant repeatedly made plain he did not agree with the Government’s  
28 presentation and intended his outburst to prevent the Government from completing  
its presentation. Even considered in light of the diagnoses discussed in

1 Defendant's briefing, as well as possible effects from insomnia, the Court finds  
2 that Defendant had sufficient mental capacity to be aware of his actions and how  
3 they affected administration of justice. At prior hearings and during trial  
4 Defendant repeatedly demonstrated his ability to follow the rules of courtroom  
5 decorum. He went to the podium and sat when he was directed to, addressed the  
6 Court in an appropriate manner (and without slurs or profanity), and allowed  
7 others, including the Government, Court, and witnesses, to speak without  
8 interruption. He consistently comported himself appropriately throughout the pre-  
9 trial and trial phases of his case. His actions at the sentencing hearing broke with  
10 his past behavior and demonstrated a willful choice to disrupt the proceedings.

## 11 **II. MOTION TO REDUCE SANCTION**

12 Defendant argues that mitigating factors such as his age, health issues (many  
13 of which require daily medication), and mental health struggles all support a  
14 reduction in the 7-day jail sanction imposed by the Court. The Court disagrees and  
15 notes that all of the bases for mitigation raised by Defendant now were also  
16 potential defenses at trial, yet no such defenses were raised at trial or offered in  
17 mitigation ahead of the sentencing hearing. Only now, when Defendant is  
18 directly—rather than hypothetically—experiencing a meaningful consequence for  
19 his actions, are such defenses and mitigation arguments raised.  
20

21 Nonetheless, the Court will still reduce the contempt sanction from seven to  
22 five days with the hope that Defendant will now comport himself appropriately  
23 when he next appears in court. Defendant is fully capable of conducting himself  
24 appropriately during these proceedings and it is solely his responsibility to do so.  
25

26 Accordingly, **IT IS ORDERED:**

27 1. Defendant's Motion for Reconsideration of Contempt Finding and  
28 Duration of Sanction, **ECF No. 28**, is **GRANTED in part, DENIED in part**. The  
finding of contempt remains, but Defendant's sanction is reduced.

1           2.     Defendant shall be released from custody on **Saturday, September**  
2 **28, 2024, at 9:00 a.m.**

3           3.     Any appeal of this contempt order shall be made to the district court  
4 pursuant to 28 U.S.C. § 636(e)(7).

5           The District Court Executive shall file this Order and provide copies to  
6 counsel and the United States Marshal Service—Action Required.

7           DATED September 27, 2024.

A handwritten signature in blue ink, reading "James A. Goetze", is written over a horizontal line.

JAMES A. GOETZE  
UNITED STATES MAGISTRATE JUDGE